

109TH CONGRESS
2D SESSION

H. R. 4838

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2006

Mr. SHAW introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medical Malpractice
5 Reform Act of 2006”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—

1 (1) EFFECT ON HEALTH CARE ACCESS AND
2 COSTS.—Congress finds that our current civil justice
3 system is adversely affecting patient access to health
4 care services, better patient care, and cost-efficient
5 health care, in that the health care liability system
6 is a costly and ineffective mechanism for resolving
7 claims of health care liability and compensating in-
8 jured patients, and is a deterrent to the sharing of
9 information among health care professionals which
10 impedes efforts to improve patient safety and quality
11 of care.

12 (2) EFFECT ON INTERSTATE COMMERCE.—
13 Congress finds that the health care and insurance
14 industries are industries affecting interstate com-
15 merce and the health care liability litigation systems
16 existing throughout the United States are activities
17 that affect interstate commerce by contributing to
18 the high costs of health care and premiums for
19 health care liability insurance purchased by health
20 care system providers.

21 (3) EFFECT ON FEDERAL SPENDING.—Con-
22 gress finds that the health care liability litigation
23 systems existing throughout the United States have
24 a significant effect on the amount, distribution, and
25 use of Federal funds because of—

1 (A) the large number of individuals who
2 receive health care benefits under programs op-
3 erated or financed by the Federal Government;

4 (B) the large number of individuals who
5 benefit because of the exclusion from Federal
6 taxes of the amounts spent to provide them
7 with health insurance benefits; and

8 (C) the large number of health care pro-
9 viders who provide items or services for which
10 the Federal Government makes payments.

11 (b) PURPOSE.—It is the purpose of this Act to imple-
12 ment reasonable, comprehensive, and effective health care
13 liability reforms designed to—

14 (1) improve the availability of health care serv-
15 ices in cases in which health care liability actions
16 have been shown to be a factor in the decreased
17 availability of services;

18 (2) reduce the incidence of “defensive medi-
19 cine” and lower the cost of health care liability in-
20 surance, all of which contribute to the escalation of
21 health care costs;

22 (3) ensure that persons with meritorious health
23 care injury claims receive fair and adequate com-
24 pensation, including reasonable noneconomic dam-
25 ages;

1 (4) improve the fairness and cost-effectiveness
2 of our current health care liability system to resolve
3 disputes over, and provide compensation for, health
4 care liability by reducing uncertainty in the amount
5 of compensation provided to injured individuals; and

6 (5) provide an increased sharing of information
7 in the health care system which will reduce unin-
8 tended injury and improve patient care.

9 **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

10 The time for the commencement of a health care law-
11 suit shall be 3 years after the date of manifestation of
12 injury or 1 year after the claimant discovers, or through
13 the use of reasonable diligence should have discovered, the
14 injury, whichever occurs first. In no event shall the time
15 for commencement of a health care lawsuit exceed 3 years
16 after the date of manifestation of injury unless tolled for
17 any of the following—

18 (1) upon proof of fraud;

19 (2) intentional concealment; or

20 (3) the presence of a foreign body, which has no
21 therapeutic or diagnostic purpose or effect, in the
22 person of the injured person.

23 Actions by a minor shall be commenced within 3 years
24 from the date of the alleged manifestation of injury except
25 that actions by a minor under the full age of 6 years shall

1 be commenced within 3 years of manifestation of injury
2 or prior to the minor's 8th birthday, whichever provides
3 a longer period. Such time limitation shall be tolled for
4 minors for any period during which a parent or guardian
5 and a health care provider or health care organization
6 have committed fraud or collusion in the failure to bring
7 an action on behalf of the injured minor.

8 **SEC. 4. COMPENSATING PATIENT INJURY.**

9 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
10 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
11 health care lawsuit, nothing in this Act shall limit a claim-
12 ant's recovery of the full amount of the available economic
13 damages, notwithstanding the limitation in subsection (b).

14 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
15 health care lawsuit, the amount of noneconomic damages,
16 if available, may be as much as \$250,000, regardless of
17 the number of parties against whom the action is brought
18 or the number of separate claims or actions brought with
19 respect to the same injury.

20 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
21 DAMAGES.—For purposes of applying the limitation in
22 subsection (b), future noneconomic damages shall not be
23 discounted to present value. The jury shall not be in-
24 formed about the maximum award for noneconomic dam-
25 ages. An award for noneconomic damages in excess of

1 \$250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law. If separate awards are rendered for past and future noneconomic damages and the combined awards exceed \$250,000, the future noneconomic damages shall be reduced first.

9 (d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. Whenever a judgment of liability is rendered as to any party, a separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

21 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

22 (a) COURT SUPERVISION OF SHARE OF DAMAGES
23 ACTUALLY PAID TO CLAIMANTS.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest

1 that may have the effect of reducing the amount of dam-
2 ages awarded that are actually paid to claimants. In par-
3 ticular, in any health care lawsuit in which the attorney
4 for a party claims a financial stake in the outcome by vir-
5 tue of a contingent fee, the court shall have the power
6 to restrict the payment of a claimant's damage recovery
7 to such attorney, and to redirect such damages to the
8 claimant based upon the interests of justice and principles
9 of equity. In no event shall the total of all contingent fees
10 for representing all claimants in a health care lawsuit ex-
11 ceed the following limits:

12 (1) 40 percent of the first \$50,000 recovered by
13 the claimant(s).

14 (2) 33⅓ percent of the next \$50,000 recovered
15 by the claimant(s).

16 (3) 25 percent of the next \$500,000 recovered
17 by the claimant(s).

18 (4) 15 percent of any amount by which the re-
19 covery by the claimant(s) is in excess of \$600,000.

20 (b) APPLICABILITY.—The limitations in this section
21 shall apply whether the recovery is by judgment, settle-
22 ment, mediation, arbitration, or any other form of alter-
23 native dispute resolution. In a health care lawsuit involv-
24 ing a minor or incompetent person, a court retains the
25 authority to authorize or approve a fee that is less than

1 the maximum permitted under this section. The require-
2 ment for court supervision in the first two sentences of
3 subsection (a) applies only in civil actions.

4 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

5 In any health care lawsuit involving injury or wrong-
6 ful death, any party may introduce evidence of collateral
7 source benefits. If a party elects to introduce such evi-
8 dence, any opposing party may introduce evidence of any
9 amount paid or contributed or reasonably likely to be paid
10 or contributed in the future by or on behalf of the oppos-
11 ing party to secure the right to such collateral source bene-
12 fits. No provider of collateral source benefits shall recover
13 any amount against the claimant or receive any lien or
14 credit against the claimant's recovery or be equitably or
15 legally subrogated to the right of the claimant in a health
16 care lawsuit involving injury or wrongful death. This sec-
17 tion shall apply to any health care lawsuit that is settled
18 as well as a health care lawsuit that is resolved by a fact
19 finder. This section shall not apply to section 1862(b) (42
20 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
21 1396a(a)(25)) of the Social Security Act.

22 **SEC. 7. PUNITIVE DAMAGES.**

23 (a) IN GENERAL.—Punitive damages may, if other-
24 wise permitted by applicable State or Federal law, be
25 awarded against any person in a health care lawsuit only

1 if it is proven by clear and convincing evidence that such
2 person acted with malicious intent to injure the claimant,
3 or that such person deliberately failed to avoid unneces-
4 sary injury that such person knew the claimant was sub-
5 stantially certain to suffer. In any health care lawsuit
6 where no judgment for compensatory damages is rendered
7 against such person, no punitive damages may be awarded
8 with respect to the claim in such lawsuit. No demand for
9 punitive damages shall be included in a health care lawsuit
10 as initially filed. A court may allow a claimant to file an
11 amended pleading for punitive damages only upon a mo-
12 tion by the claimant and after a finding by the court, upon
13 review of supporting and opposing affidavits or after a
14 hearing, after weighing the evidence, that the claimant has
15 established by a substantial probability that the claimant
16 will prevail on the claim for punitive damages. At the re-
17 quest of any party in a health care lawsuit, the trier of
18 fact shall consider in a separate proceeding—

19 (1) whether punitive damages are to be award-
20 ed and the amount of such award; and

21 (2) the amount of punitive damages following a
22 determination of punitive liability.

23 If a separate proceeding is requested, evidence relevant
24 only to the claim for punitive damages, as determined by
25 applicable State law, shall be inadmissible in any pro-

1 ceeding to determine whether compensatory damages are
2 to be awarded.

3 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
4 AGES.—

5 (1) FACTORS CONSIDERED.—In determining
6 the amount of punitive damages, if awarded, in a
7 health care lawsuit, the trier of fact shall consider
8 only the following—

9 (A) the severity of the harm caused by the
10 conduct of such party;

11 (B) the duration of the conduct or any
12 concealment of it by such party;

13 (C) the profitability of the conduct to such
14 party;

15 (D) the number of products sold or med-
16 ical procedures rendered for compensation, as
17 the case may be, by such party, of the kind
18 causing the harm complained of by the claim-
19 ant;

20 (E) any criminal penalties imposed on such
21 party, as a result of the conduct complained of
22 by the claimant; and

23 (F) the amount of any civil fines assessed
24 against such party as a result of the conduct
25 complained of by the claimant.

1 (2) MAXIMUM AWARD.—The amount of punitive
2 damages, if awarded, in a health care lawsuit may
3 be as much as \$250,000 or as much as two times
4 the amount of economic damages awarded, which-
5 ever is greater. The jury shall not be informed of
6 this limitation.

7 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT
8 COMPLY WITH FDA STANDARDS.—

9 (1) IN GENERAL.—

10 (A) No punitive damages may be awarded
11 against the manufacturer or distributor of a
12 medical product, or a supplier of any compo-
13 nent or raw material of such medical product,
14 based on a claim that such product caused the
15 claimant's harm where—

16 (i)(I) such medical product was sub-
17 ject to premarket approval, clearance, or li-
18 censure by the Food and Drug Administra-
19 tion with respect to the safety of the for-
20 mulation or performance of the aspect of
21 such medical product which caused the
22 claimant's harm or the adequacy of the
23 packaging or labeling of such medical
24 product; and

1 (II) such medical product was so ap-
2 proved, cleared, or licensed; or

3 (ii) such medical product is generally
4 recognized among qualified experts as safe
5 and effective pursuant to conditions estab-
6 lished by the Food and Drug Administra-
7 tion and applicable Food and Drug Admin-
8 istration regulations, including without
9 limitation those related to packaging and
10 labeling, unless the Food and Drug Admin-
11 istration has determined that such medical
12 product was not manufactured or distrib-
13 uted in substantial compliance with appli-
14 cable Food and Drug Administration stat-
15 utes and regulations.

16 (B) RULE OF CONSTRUCTION.—Subpara-
17 graph (A) may not be construed as establishing
18 the obligation of the Food and Drug Adminis-
19 tration to demonstrate affirmatively that a
20 manufacturer, distributor, or supplier referred
21 to in such subparagraph meets any of the con-
22 ditions described in such subparagraph.

23 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

24 A health care provider who prescribes, or who dis-
25 penses pursuant to a prescription, a medical product

1 approved, licensed, or cleared by the Food and Drug
2 Administration shall not be named as a party to a
3 product liability lawsuit involving such product and
4 shall not be liable to a claimant in a class action
5 lawsuit against the manufacturer, distributor, or
6 seller of such product. Nothing in this paragraph
7 prevents a court from consolidating cases involving
8 health care providers and cases involving products li-
9 ability claims against the manufacturer, distributor,
10 or product seller of such medical product.

11 (3) PACKAGING.—In a health care lawsuit for
12 harm which is alleged to relate to the adequacy of
13 the packaging or labeling of a drug which is required
14 to have tamper-resistant packaging under regula-
15 tions of the Secretary of Health and Human Serv-
16 ices (including labeling regulations related to such
17 packaging), the manufacturer or product seller of
18 the drug shall not be held liable for punitive dam-
19 ages unless such packaging or labeling is found by
20 the trier of fact by clear and convincing evidence to
21 be substantially out of compliance with such regula-
22 tions.

23 (4) EXCEPTION.—Paragraph (1) shall not
24 apply in any health care lawsuit in which—

1 (A) a person, before or after premarket ap-
2 proval, clearance, or licensure of such medical
3 product, knowingly misrepresented to or with-
4 held from the Food and Drug Administration
5 information that is required to be submitted
6 under the Federal Food, Drug, and Cosmetic
7 Act (21 U.S.C. 301 et seq.) or section 351 of
8 the Public Health Service Act (42 U.S.C. 262)
9 that is material and is causally related to the
10 harm which the claimant allegedly suffered; or

11 (B) a person made an illegal payment to
12 an official of the Food and Drug Administra-
13 tion for the purpose of either securing or main-
14 taining approval, clearance, or licensure of such
15 medical product.

16 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
17 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
18 **SUITS.**

19 (a) IN GENERAL.—In any health care lawsuit, if an
20 award of future damages, without reduction to present
21 value, equaling or exceeding \$50,000 is made against a
22 party with sufficient insurance or other assets to fund a
23 periodic payment of such a judgment, the court shall, at
24 the request of any party, enter a judgment ordering that
25 the future damages be paid by periodic payments. In any

1 health care lawsuit, the court may be guided by the Uni-
2 form Periodic Payment of Judgments Act promulgated by
3 the National Conference of Commissioners on Uniform
4 State Laws.

5 (b) APPLICABILITY.—This section applies to all ac-
6 tions which have not been first set for trial or retrial be-
7 fore the effective date of this Act.

8 **SEC. 9. DEFINITIONS.**

9 In this Act:

10 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
11 TEM; ADR.—The term “alternative dispute resolution
12 system” or “ADR” means a system that provides
13 for the resolution of health care lawsuits in a man-
14 ner other than through a civil action brought in a
15 State or Federal court.

16 (2) CLAIMANT.—The term “claimant” means
17 any person who brings a health care lawsuit, includ-
18 ing a person who asserts or claims a right to legal
19 or equitable contribution, indemnity or subrogation,
20 arising out of a health care liability claim or action,
21 and any person on whose behalf such a claim is as-
22 serted or such an action is brought, whether de-
23 ceased, incompetent, or a minor.

24 (3) COLLATERAL SOURCE BENEFITS.—The
25 term “collateral source benefits” means any amount

1 paid or reasonably likely to be paid in the future to
2 or on behalf of the claimant, or any service, product
3 or other benefit provided or reasonably likely to be
4 provided in the future to or on behalf of the claim-
5 ant, as a result of the injury or wrongful death, pur-
6 suant to—

7 (A) any State or Federal health, sickness,
8 income-disability, accident, or workers’ com-
9 pensation law;

10 (B) any health, sickness, income-disability,
11 or accident insurance that provides health bene-
12 fits or income-disability coverage;

13 (C) any contract or agreement of any
14 group, organization, partnership, or corporation
15 to provide, pay for, or reimburse the cost of
16 medical, hospital, dental, or income disability
17 benefits; and

18 (D) any other publicly or privately funded
19 program.

20 (4) COMPENSATORY DAMAGES.—The term
21 “compensatory damages” means objectively
22 verifiable monetary losses incurred as a result of the
23 provision of, use of, or payment for (or failure to
24 provide, use, or pay for) health care services or med-
25 ical products, such as past and future medical ex-

1 penses, loss of past and future earnings, cost of ob-
2 taining domestic services, loss of employment, and
3 loss of business or employment opportunities, dam-
4 ages for physical and emotional pain, suffering, in-
5 convenience, physical impairment, mental anguish,
6 disfigurement, loss of enjoyment of life, loss of soci-
7 ety and companionship, loss of consortium (other
8 than loss of domestic service), hedonic damages, in-
9 jury to reputation, and all other nonpecuniary losses
10 of any kind or nature. The term “compensatory
11 damages” includes economic damages and non-
12 economic damages, as such terms are defined in this
13 section.

14 (5) CONTINGENT FEE.—The term “contingent
15 fee” includes all compensation to any person or per-
16 sons which is payable only if a recovery is effected
17 on behalf of one or more claimants.

18 (6) ECONOMIC DAMAGES.—The term “economic
19 damages” means objectively verifiable monetary
20 losses incurred as a result of the provision of, use
21 of, or payment for (or failure to provide, use, or pay
22 for) health care services or medical products, such as
23 past and future medical expenses, loss of past and
24 future earnings, cost of obtaining domestic services,

1 loss of employment, and loss of business or employ-
2 ment opportunities.

3 (7) HEALTH CARE LAWSUIT.—The term
4 “health care lawsuit” means any health care liability
5 claim concerning the provision of health care goods
6 or services or any medical product affecting inter-
7 state commerce, or any health care liability action
8 concerning the provision of health care goods or
9 services or any medical product affecting interstate
10 commerce, brought in a State or Federal court or
11 pursuant to an alternative dispute resolution system,
12 against a health care provider, a health care organi-
13 zation, or the manufacturer, distributor, supplier,
14 marketer, promoter, or seller of a medical product,
15 regardless of the theory of liability on which the
16 claim is based, or the number of claimants, plain-
17 tiffs, defendants, or other parties, or the number of
18 claims or causes of action, in which the claimant al-
19 leges a health care liability claim. Such term does
20 not include a claim or action which is based on
21 criminal liability; which seeks civil fines or penalties
22 paid to Federal, State, or local government; or which
23 is grounded in antitrust.

24 (8) HEALTH CARE LIABILITY ACTION.—The
25 term “health care liability action” means a civil ac-

1 tion brought in a State or Federal Court or pursu-
2 ant to an alternative dispute resolution system,
3 against a health care provider, a health care organi-
4 zation, or the manufacturer, distributor, supplier,
5 marketer, promoter, or seller of a medical product,
6 regardless of the theory of liability on which the
7 claim is based, or the number of plaintiffs, defend-
8 ants, or other parties, or the number of causes of ac-
9 tion, in which the claimant alleges a health care li-
10 ability claim.

11 (9) HEALTH CARE LIABILITY CLAIM.—The
12 term “health care liability claim” means a demand
13 by any person, whether or not pursuant to ADR,
14 against a health care provider, health care organiza-
15 tion, or the manufacturer, distributor, supplier, mar-
16 keter, promoter, or seller of a medical product, in-
17 cluding, but not limited to, third-party claims, cross-
18 claims, counter-claims, or contribution claims, which
19 are based upon the provision of, use of, or payment
20 for (or the failure to provide, use, or pay for) health
21 care services or medical products, regardless of the
22 theory of liability on which the claim is based, or the
23 number of plaintiffs, defendants, or other parties, or
24 the number of causes of action.

1 (10) HEALTH CARE ORGANIZATION.—The term
2 “health care organization” means any person or en-
3 tity which is obligated to provide or pay for health
4 benefits under any health plan, including any person
5 or entity acting under a contract or arrangement
6 with a health care organization to provide or admin-
7 ister any health benefit.

8 (11) HEALTH CARE PROVIDER.—The term
9 “health care provider” means any person or entity
10 required by State or Federal laws or regulations to
11 be licensed, registered, or certified to provide health
12 care services, and being either so licensed, reg-
13 istered, or certified, or exempted from such require-
14 ment by other statute or regulation.

15 (12) HEALTH CARE GOODS OR SERVICES.—The
16 term “health care goods or services” means any
17 goods or services provided by a health care organiza-
18 tion, provider, or by any individual working under
19 the supervision of a health care provider, that relates
20 to the diagnosis, prevention, or treatment of any
21 human disease or impairment, or the assessment or
22 care of the health of human beings.

23 (13) MALICIOUS INTENT TO INJURE.—The
24 term “malicious intent to injure” means inten-
25 tionally causing or attempting to cause physical in-

1 jury other than providing health care goods or serv-
2 ices.

3 (14) MEDICAL PRODUCT.—The term “medical
4 product” means a drug, device, or biological product
5 intended for humans, and the terms “drug”, “de-
6 vice”, and “biological product” have the meanings
7 given such terms in sections 201(g)(1) and 201(h)
8 of the Federal Food, Drug and Cosmetic Act (21
9 U.S.C. 321) and section 351(a) of the Public Health
10 Service Act (42 U.S.C. 262(a)), respectively, includ-
11 ing any component or raw material used therein, but
12 excluding health care services.

13 (15) NONECONOMIC DAMAGES.—The term
14 “noneconomic damages” means damages for phys-
15 ical and emotional pain, suffering, inconvenience,
16 physical impairment, mental anguish, disfigurement,
17 loss of enjoyment of life, loss of society and compan-
18 ionship, loss of consortium (other than loss of do-
19 mestic service), hedonic damages, injury to reputa-
20 tion, and all other nonpecuniary losses of any kind
21 or nature.

22 (16) PUNITIVE DAMAGES.—The term “punitive
23 damages” means damages awarded, for the purpose
24 of punishment or deterrence, and not solely for com-
25 pensatory purposes, against a health care provider,

1 health care organization, or a manufacturer, dis-
2 tributor, or supplier of a medical product. Punitive
3 damages are neither economic nor noneconomic
4 damages.

5 (17) RECOVERY.—The term “recovery” means
6 the net sum recovered after deducting any disburse-
7 ments or costs incurred in connection with prosecu-
8 tion or settlement of the claim, including all costs
9 paid or advanced by any person. Costs of health care
10 incurred by the plaintiff and the attorneys’ office
11 overhead costs or charges for legal services are not
12 deductible disbursements or costs for such purpose.

13 (18) STATE.—The term “State” means each of
14 the several States, the District of Columbia, the
15 Commonwealth of Puerto Rico, the Virgin Islands,
16 Guam, American Samoa, the Northern Mariana Is-
17 lands, the Trust Territory of the Pacific Islands, and
18 any other territory or possession of the United
19 States, or any political subdivision thereof.

20 **SEC. 10. EFFECT ON OTHER LAWS.**

21 (a) VACCINE INJURY.—

22 (1) To the extent that title XXI of the Public
23 Health Service Act establishes a Federal rule of law
24 applicable to a civil action brought for a vaccine-re-
25 lated injury or death—

1 (A) this Act does not affect the application
2 of the rule of law to such an action; and

3 (B) any rule of law prescribed by this Act
4 in conflict with a rule of law of such title XXI
5 shall not apply to such action.

6 (2) If there is an aspect of a civil action
7 brought for a vaccine-related injury or death to
8 which a Federal rule of law under title XXI of the
9 Public Health Service Act does not apply, then this
10 Act or otherwise applicable law (as determined
11 under this Act) will apply to such aspect of such ac-
12 tion.

13 (b) OTHER FEDERAL LAW.—Except as provided in
14 this section, nothing in this Act shall be deemed to affect
15 any defense available to a defendant in a health care law-
16 suit or action under any other provision of Federal law.

17 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**
18 **RIGHTS.**

19 (a) HEALTH CARE LAWSUITS.—The provisions gov-
20 erning health care lawsuits set forth in this Act preempt,
21 subject to subsections (b) and (c), State law to the extent
22 that State law prevents the application of any provisions
23 of law established by or under this Act. The provisions
24 governing health care lawsuits set forth in this Act super-

1 sede chapter 171 of title 28, United States Code, to the
2 extent that such chapter—

3 (1) provides for a greater amount of damages
4 or contingent fees, a longer period in which a health
5 care lawsuit may be commenced, or a reduced appli-
6 cability or scope of periodic payment of future dam-
7 ages, than provided in this Act; or

8 (2) prohibits the introduction of evidence re-
9 garding collateral source benefits, or mandates or
10 permits subrogation or a lien on collateral source
11 benefits.

12 (b) PROTECTION OF STATES' RIGHTS AND OTHER
13 LAWS.—(1) Any issue that is not governed by any provi-
14 sion of law established by or under this Act (including
15 State standards of negligence) shall be governed by other-
16 wise applicable State or Federal law.

17 (2) This Act shall not preempt or supersede any State
18 law or provision that, in regards to attorney contingency
19 fees, mandates that a greater portion of the damage recov-
20 ery go to the claimant.

21 (3) This Act shall not preempt or supersede any State
22 or Federal law that imposes greater procedural or sub-
23 stantive protections for health care providers and health
24 care organizations from liability, loss, or damages than
25 those provided by this Act or create a cause of action.

1 (c) STATE FLEXIBILITY.—No provision of this Act
2 shall be construed to preempt—

3 (1) any State law (whether effective before, on,
4 or after the date of the enactment of this Act) that
5 specifies a particular monetary amount of compen-
6 satory or punitive damages (or the total amount of
7 damages) that may be awarded in a health care law-
8 suit in a monetary amount that is lesser than is pro-
9 vided for under this Act, notwithstanding section
10 4(a); or

11 (2) any State law in effect on or before the date
12 of the enactment of this Act that specifies the total
13 amount of all compensatory damages (both economic
14 and noneconomic) that may be awarded in a health
15 care lawsuit; or

16 (3) any defense available to a party in a health
17 care lawsuit under any other provision of State or
18 Federal law.

19 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

20 This Act shall apply to any health care lawsuit
21 brought in a Federal or State court, or subject to an alter-
22 native dispute resolution system, that is initiated on or
23 after the date of the enactment of this Act, except that
24 any health care lawsuit arising from an injury occurring
25 prior to the date of the enactment of this Act shall be

1 governed by the applicable statute of limitations provisions
2 in effect at the time the injury occurred.

3 **SEC. 13. SENSE OF CONGRESS.**

4 It is the sense of Congress that a health insurer
5 should be liable for damages for harm caused when it
6 makes a decision as to what care is medically necessary
7 and appropriate.

○